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prohibit the insurer's setting up the defense of suicide.<sup>8</sup> A Georgia statute, expressly giving the insurer this defense,<sup>9</sup> was a possible legislative declaration in favor of the disputed rule of public policy. A recent decision removed this possibility by holding that the statute did not prevent waiver of the defense by the insurer. *Mutual Life Ins. Co. v. Durden*, 72 S. E. 295 (Ga., Ct. App.). The case is thus an important addition to the already large preponderance of authority against the invalidation, on grounds of public policy, of contracts insuring the life against suicide while sane.

## RECENT CASES.

**ADVERSE POSSESSION — AGAINST WHOM TITLE MAY BE GAINED — EFFECT OF GRANTOR'S REMAINING IN POSSESSION.** — The plaintiff conveyed his land to the defendant, intending that the latter should afterwards reconvey it to him. The plaintiff made improvements on the land, and seven years after the conveyance to the defendant he demanded a reconveyance, but was given merely a life lease. Thereafter he treated the land as his own property. His occupancy, including the period before the granting of the life lease, exceeded the period of the Statute of Limitations. *Held*, that he has acquired title in fee. *Freemon v. Funk*, 117 Pac. 1024 (Kan.).

It is well settled that a life tenant cannot acquire title by adverse possession against the reversioner or remainderman, since the latter has no right of action during the continuance of the life estate. See *Pinckney v. Burrage*, 31 N. J. L. 21; *Rohn v. Harris*, 130 Ill. 525, 22 N. E. 587. This rule does not apply where the remainderman is given a right of action by statute. *Garrett v. Olford*, 132 N. W. 379 (Ia.). The principal case ignores the grant of the life estate and treats the relation of the parties as that of grantor and grantee. Some courts appear to recognize no distinction between such a case and the ordinary situation, where the parties are strangers. *Smith v. Montes*, 11 Tex. 24; *Knight v. Knight*, 178 Ill. 553, 53 N. E. 306. By the weight of authority, however, the possession of a grantor is presumed to be subject to the rights of his grantee. *Buckholder v. Sigler*, 7 Watts & S. (Pa.) 154; *Schwallback v. Chicago, etc. Ry. Co.*, 69 Wis. 292, 34 N. W. 128. In order that this presumption be rebutted, most courts hold that a clear assertion of adverse right must be brought home to the grantee. *Dotson v. Atchison, etc. Ry. Co.*, 81 Kan. 816, 106 Pac. 1045. *Cf. Zeller's Lessee v. Eckert*, 4 How. (U. S.) 289. Other courts are more ready to find that the possession is adverse. *Waltemeyer v. Baughman*, 63 Md. 200. See *Brinkman v. Jones*, 44 Wis. 498, 524. In the principal case, the grantor, during the first seven years of the occupancy relied on by him, appears to have claimed only a right of reconveyance rather than a right of present ownership.

**BANKRUPTCY — DISCHARGE — DISPUTED CLAIMS.** — The petitioner was adjudicated a bankrupt in voluntary proceedings. The only debts scheduled were stated in his schedules to be disputed. *Held*, that the petitioner is not entitled to a discharge. *Matter of Gulick*, 26 Am. B. Rep. 632 (Dist. Ct., S. D. N. Y.).

Disputed claims are debts whose existence is as yet undetermined and whose existence the alleged debtor denies. If they do actually exist, they will be

<sup>8</sup> MO. REV. STAT., 1909, § 6945; N. D. CIV. CODE, 1905, § 6064.

<sup>9</sup> GA. CODE, 1911, § 2500.

released by a discharge in bankruptcy, for there is nothing in the Act excepting debts whose existence the debtor has denied from the operation of a discharge. BANKRUPTCY ACT OF 1898, § 17*a*. There is therefore no basis for the statement in the opinion of the principal case that the Act does not authorize the discharge of disputed claims. Nor can the decision well be supported on the ground of lack of jurisdiction for the adjudication. The actual existence of debts is a fact necessary to found jurisdiction. BANKRUPTCY ACT OF 1898, § 4*a*. See 3 REMINGTON, BANKRUPTCY, § 41. But the adjudication is based on the petition. See BANKRUPTCY ACT OF 1898, § 18*g*. That no debts exist does not appear from the petition. Nor do the creditors offer to prove that no debts exist. Furthermore, it is doubtful whether an adjudication even in voluntary proceedings can be attacked on an application for a discharge. *In re Mason*, 99 Fed. 256. But see *In re Wheeler*, 165 Fed. 188.

**BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — FUTURE CONTINGENT INTEREST IN LIFE INSURANCE POLICY.** — An insurance policy provided for payment of a certain sum to the bankrupt's wife on his death but gave him the option to surrender the policy for cash at the end of twenty years, if he was then living. § 70*a* (5) of the Bankruptcy Act of 1898 provides that "property which . . . [the bankrupt] could by any means have transferred" shall pass to the trustee. *Held*, that the bankrupt's option to surrender the policy is not within this section. *In re Schaefer*, 189 Fed. 187 (Dist. Ct., N. D. Ohio, W. D.).

If, as the court is willing to assume, the insured will have the right to surrender the policy without his wife's consent, this case, in holding the right not assignable, is opposed to all other decisions on such policies. *In re Welling*, 113 Fed. 189; *Matter of Phelps*, 15 Am. B. Rep. 170; *In re Hettling*, 175 Fed. 65. It is supported only by a dissenting opinion. See *In re Welling*, 113 Fed. 189, 195. By its doctrine the policy is apparently regarded as a *res* in which the wife has the vested interest, and the insured a mere inalienable expectancy. But the limitations as to assigning future contingent interests in tangible property are not here involved. Rights under an insurance policy are choses in action. The insurer has contracted that the insured may, if he live twenty years, surrender the policy for cash. The insured thus has a right under an existing contract. The fact that nothing is to be paid under this contract right until a time in the future, and that the payment is subject to a contingency, affects the present value of the right, but cannot affect its assignability. See *In re Coleman*, 136 Fed. 818, 819; *Bassett v. Parsons*, 140 Mass. 169, 170, 3 N. E. 547.

**BILLS AND NOTES — OVERDUE PAPER — EFFECT OF MATURITY OF SOME OF A SERIES OF NOTES GIVEN IN ONE TRANSACTION.** — The defendant gave nine promissory notes in payment for a press, each reciting that it was secured by a certain chattel mortgage of even date. The payee transferred the notes and mortgage to the plaintiff for value after five of the notes were overdue. The defendant interposed a counterclaim for breach of warranty by the payee. *Held*, that this claim is valid against all of the notes. *Rowe v. Scott*, 132 N. W. 695 (S. D.).

The effect of maturity on a negotiable instrument is not to make it unassignable at law. The creation by transfer of a new legal title better than that of the transferor is prevented. *Down v. Halling*, 4 B. & C. 330; *Northampton National Bank v. Kidder*, 106 N. Y. 221. But the transferor's legal title passes, and maturity acts as notice of the equities to which it is subject. See *Fisher v. Leland*, 4 Cush. (Mass.) 456. Usually bad faith in the purchaser is essential to such notice. *Murray v. Lardner*, 2 Wall. (U. S.) 110. But in the case of a defect in the instrument so apparent as maturity, this requirement is dispensed